IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CIVIL REVISION APPLICATION NO.85 OF 2005

Shri. Abdulhabib Valimamad — Petitioner
vs.
1. The Union Territory of Daman and Diu
& ors. — Respondents

Mr.R.Subramanium with Mr.S.A.Sawant with
Mr.J.S.Chandnani for the petitioner.

Mr.Girish Kulkarni with Ms.Sonali A. Joshi for the
respondents 1 and 2.

Mr.A.M.Sethna for the respondent no.3.

AND ALONG WITH
CIVIL REVISION APPLICATION NO.86 OF 2005

Abhijeet Developers Private Limited — Petitioner
vs.
1. Shri Abdulhabib Valimamad & ors. — Respondents

Mr.S.H.Sanjanwala with Mr.S.A.Sawant with Mr.Nilesh
Trivedi with Mr.H.V.Kode for the petitioner.

Mr.Girish Kulkarni with Ms.Sonali A. Joshi for the
respondents 1 and 2.

Mr.A.M.Sethna for the respondent no.3.

CORAM : B.H. MARLAPALLE,J.

DATE OF RESERVATION OF ORDER: 17th August 2005

DATE OF PRONOUNCEMENT OF ORDER : 19th August 2005

P.C.

Since the issue involved in these two revision applications is identical, they were heard together and are being disposed of by this common order.

2. Both these revision applications challenge the order dated 8th February 2005 passed by the District Judge, Daman & Diu allowing Civil Miscellaneous Application No.1/2004 which was an application for condonation of delay. Regular Civil Suit No.12/2001 came to be allowed by the learned Civil Judge, Senior Division at Diu vide his judgment and decree dated 18th July 2003 and the same was sought to be challenged by filing an appeal, but belatedly. There was delay of 170 days in filing this appeal before the District Court and, therefore, Civil Miscellaneous Application No.1/2004 was filed. The learned District Judge by the impugned order held that the delay of 170 days was not on account of either negligence or any wilful acts. Refusing to condone the said delay would cause serious prejudice not only to the appellants but also to the public as the suit land admeasured about 73,627 sq.mts. (about 18 acres) which was a Government land originally. The learned District Judge further observed that the Court should not adopt strict standard of proof insisting upon explanation of day to day delay in such a case and sufficient cause was shown for condoning the delay if regards be had to the sequence of events from 18th July 2003 onwards till the appeal was filed, as set out in paragraph 17 of the impugned order.

3. When these revision applications were taken up for hearing on admission on 18th July 2005 the following order was passed by me and, consequently, the Administrator has filed an affidavit in reply explaining the sequence of events mentioned against items (iii) to (vi) in paragraph 17 in the impugned order:

> ". The Collector of Diu is hereby directed to file affidavit explaining the delay from 21-7-2003 till 21-1-2004 i.e. about six months and particularly because in para 17 of the impugned order no dates have been mentioned against Items (iii) to (vi). Such an affidavit shall be filed within a period of two weeks from today failing which the Administrator, Daman & Diu at Moti Daman shall remain present before this Court with the concerned record so as to assist the learned counsel for the Union of India. It is made clear that the application will be finally disposed off on the next date. The order of status quo passed on 27-4-2005 will continue to operate until the next date."

4. The learned counsel for the respective petitioners submitted that there was no case made out to condone the delay as the appellants before the Lower Appellate Court had shown a casual and cavalier approach, it was not in public interest that the appeal was filed but in fact it was in a way luxurious litigation, false statements were made in the application for condonation of delay in support of the case for sufficient cause, mutation entry was already effected in favour of the purchaser who is the petitioner in C.R.A.No.86/2005 and equity was created in favour of the purchaser on registration of

the conveyance in the interregnum period. It was lastly submitted that even otherwise the appeal was devoid of merits and, therefore, there was no reason for the Lower Appellate Court to hold that sufficient cause was shown to condone the delay of 170 days. In support of these arguments reliance was placed on the following decisions:

(a) State of Rajasthan & anr. v. Jaimal, **1991 Supp. (2) SCC 286**;

(b) Union of India v. Visveswaraya Iron & Steel Limited, **AIR 1987 SC 669**;

(c) Commissioner of Wealth Tax, Bombay v. Amateur Riders Club, Bombay, **1994 Supp.(2) SCC 603** and

(d) Commissioner of Income Tax v. Shankerlal Ved Prakash HUF, **(2004) 138 TAXMAN 125 (Delhi)**.

5. Whereas the learned counsel for the respondents-appellants while supporting the impugned order has referred to the affidavit in reply filed by the Administrator and the documents annexed thereto so as to show that sufficient cause was made out to condone the delay. He referred to the principles laid down by the Supreme Court in the case of (a) Collector, Land Acquisition Anantnag & anr. v. Master Katiji & ors, **A.I.R.1987 SC 1353** and (b) Special Tahsildar, Land Acquisition, Kerala vs. K.V.Ayisumma, **A.I.R.1996 SC 2750**.

6. In the case of Collector, Land Acquisition, Anantnag (supra) Their Lordships held that the expression "sufficient cause" employed by the legislature in section 5 of the Indian Limitation Act, 1963 is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice - that being the life purpose for the existence of the institution of Courts, Their Lordships further pointed out that (a) ordinarily a litigant does not stand to benefit by lodging an appeal late; (b) refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated and as against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties; (c) every day's delay must be explained does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner; (d) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay; (e) there is no presumption that delay is occasioned deliberately or on account of culpable negligence, or on

account of malafides, a litigant does not stand to benefit by resorting to delay and in fact he runs a serious risk and (f) it must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

7. The affidavit in reply of the Collector states that a certified true copy of the trial Court's decree was received by his office on 23rd July 2003 in response to the application made on 21st July 2003. The post of Law Secretary was vacant and, therefore, vide letter dated 4th August 2003 a written opinion was sought from the Government Advocate at Diu who had appeared before the trial Court. Vide his reply dated 6th August 2003 the Government advocate concluded that there was no possibility of success in the appeal and no fruitful purpose was likely to be served by filing the appeal. This letter was received on 13th August 2003 and on 18th August 2003 the Land Section of the Collectorate prepared a note and placed before the Collector who noted that the earlier Collector had allowed/granted the land under section 14(3) of the Goa, Daman and Diu Land Revenue Code and issued the order under rule 2(3) of the Goa, Daman and Diu Land Revenue (Enquiry into title of land) Rules, 1969. This being the position, clarification was sought as to whether the suit land was

Class I or Class II. By the note dated 4th September 2003 it was pointed out that the land appeared to be class I, but it was suggested to seek legal opinion. It was also pointed out that a letter dated 3rd September 2003 was received from M/s.Abhijit Developers Private Limited seeking clarification for registration of sale deed of the suit land. On the same day the Collector requested the Sub-Registrar, Diu not to register the sale deed of the suit land until further orders as the details of the land, ownership and title etc. were under verification. The collector called for the opinion of the Government advocate vide his letter dated 5th September 2003 regarding the claim made by M/s.Abhijit Developers Private Limited and he received reply from the Government advocate vide his letter dated 23rd September 2003. The Government advocate pointed out that the registration of the documents concerned could not be refused and, therefore, on 8th October 2003 the Collector withdrew his letter dated 3rd September 2003 addressed to the Sub-Registrar. On the same day the newly appointed Secretary of Law Department joined and he visited Diu on 27th October 2003. During this visit, his opinion was sought on the status of the land i.e. whether it is class I or class II. The Secretary was also requested to give his opinion whether the Registrar could have refused to entertain the request for registration of the conveyance between the landlord

and the developer. On 30th October 2003 the Law Secretary gave his written opinion that the Sub-Registrar could not have refused the registration on any other ground other than the grounds mentioned under Section 34 of the Indian Limitation Act, 1908 and Rule 40 of the Goa, Daman and Diu Registration Rules, 1965. He also pointed out that the person holding the title being absolute owner after confirmation by the then Collector vide his order passed on 8th August 1988 had clear title for transfer of the land. On 21st November 2003 the Collector called for clarification on the following two points:

(a) Whether the order passed on 8th August 1988 was appealable or revisable? and

(b) Notwithstanding the opinion given by the Government advocate, can there be a second look into the issue of filing the appeal against the judgment and decree dated 18th July 2003?

The Law Secretary gave a written opinion on 17th December 2003 and pointed out, interalia, that the appeal period was over and it would be difficult for the Government to explain the delay from 8th August 1988 till the show cause notice dated 15th February 1999. On 24th January 2004 the Collector passed an order to

approach the Government Pleader to file an appeal in the latest sitting of the District Judge at Diu beginning from 3rd February 2004. Consequently, the Deputy Collector filed the appeal on 3rd February 2004.

8. These details furnished and duly supported by the documents on record would obviously show that there was no element of negligence or inaction on the part of the Collector in taking steps to file an appeal against the judgment and decree passed by the trial Court on 18th July 2003. The Lower Appellate Court was, therefore, right in holding that sufficient cause was made out to condone the delay of 170 days. It would be useful to reproduce the observations made in paragraph 14 in the case of State of Nagaland v. Lipok AO & ors, **JT 2005(4) SC 10**.

> "14. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay - intentional or otherwise - is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for

> explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the govenmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause."

9. Thus, there is no case made out to show that the order impugned is either patently erroneous or in excess of jurisdiction. The reasoning given by the Lower Appellate Court in holding that sufficient cause was made out for condoning the delay of 170 days is supported from the record that was placed before this Court along with the affidavit in reply filed by the Collector, Diu. The challenge to the impugned order, therefore, fails and hence the Civil Revision Applications are rejected summarily.

10. Ad-interim order stands vacated.

(B.H. MARLAPALLE,J.)

. After the pronouncement of the order, the learned counsel for the petitioner in C.R.A.No.85/2005 makes oral application for continuance of the ad-interim order passed by this Court. The application is hereby rejected.

(B. H. MARLAPALLE, J.)